Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-502

STEPHEN MUSS, et al.,

Appellants,

v.

CITY OF MIAMI BEACH, etc.,

Appellee.

On Appeal from the District Court of Appeal of Florida, Third District

JURISDICTIONAL STATEMENT

Mahoney Hadlow & Adams
Post Office Box 4099
Jacksonville, Florida 32201

1401 First Federal Building
One Southeast 3rd Avenue
Miami, Florida 33131

Of Counsel

Earl B. Hadlow, Esquire
Post Office Box 4099
Jacksonville, Florida 32201

John K. Aurell, Esquire
1401 First Federal Building
One Southeast 3rd Avenue
Miami, Florida 33131

Attorneys for Appellants.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No.

STEPHEN MUSS, et al.,

Appellants,

v.

CITY OF MIAMI BEACH, etc.,

Appellee.

JURISDICTIONAL STATEMENT

Appellants* appeal from a final judgment, decision and opinion of the District Court of Appeal of Florida, Third

*The appellants are Stephen Muss, Charles H. Rosenberg, individually, and Stephen H. Muss, Deborah Morgan, and Cynthia Rosenberg, as the Executors of the Last Will and Testament of Alexander Muss, a partnership doing business under the name and style of Seacoast Towers West and Seacoast Towers V, and Alexander Muss & Sons, Inc., a New York corporation authorized to do business in the State of Florida doing business under the names and styles of Seacoast Towers North, Seacoast Towers South and Seacoast Towers East, and E. J. Frankel, Leonard Frankel, Benjamin Frankel, William Frankel, Reubin Rosen and Maurice Rosen, a partnership doing business under the name and style of Roney Plaza Apartments.

District, affirming a final judgment of dismissal. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

Opinion Below

The opinion of the District Court of Appeal of Florida, Third District, is reported in 339 So. 2d 236. The trial court's final judgment of dismissal is not reported. The order of the Supreme Court of Florida denying appellants' petition for a writ of certiorari to review the decision of the District Court of Appeal is reported in 348 So. 2d 950. Copies of the opinion of the District Court of Appeal, the final judgment of dismissal affirmed thereby, and the Florida Supreme Court's order denying certiorari, are included in Appendix A to this statement.

Jurisdiction

This is an action brought by appellants to enjoin enforcement of Ordinance No. 74-2018 of appellee City of Miami Beach. The complaint was filed in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida. The Circuit Court's final judgment of dismissal was dated and entered December 12, 1975. That dismissal was affirmed by the final judgment, decision and opinion of the District Court of Appeal of Florida, Third District, dated and entered October 12, 1976, rehearing denied by order dated and entered November 24, 1976. Appellants' petition for a writ of certiorari to review the decision of the District Court of Appeal was denied by the Supreme Court of Florida on May 6, 1977, rehearing denied July 19, 1977. The notice of appeal was filed July 21, 1977, in the District Court of Appeal of Florida, Third District. Copies of the orders

denying rehearings are included in Appendix A. A copy of the notice of appeal appears as Appendix B, and a copy of the opinion of the District Court of Appeal in the companion case of *Lifschitz v. City of Miami Beach*, reported in 339 So. 2d 232, is in Appendix D.

The statutory provision believed to confer jurisdiction of this appeal on the Supreme Court of the United States is 28 U.S.C. § 1257(2). Cases believed to sustain the jurisdiction of the Supreme Court of the United States are as follows: *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975); *King Mfg. Co. v. City Council of Augusta*, 277 U.S. 100 (1928). *See also Talley v. California*, 362 U.S. 60 (1960) (certiorari proceeding).

Ordinance No. 74-2018 appears in Section 17A of the Code of the City of Miami Beach. A copy of the ordinance is in Appendix C.

If the Supreme Court of the United States does not consider appeal the proper method of review, appellants request that this jurisdictional statement be considered as a petition for writ of certiorari pursuant to 28 U.S.C. § 2103.

Questions Presented

Is Ordinance No. 74-2018 invalid as repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, because:

1. when the ordinance was adopted the conditions required to justify the imposition of rent controls did not exist in the City of Miami Beach;

2. after the adoption of the ordinance the conditions re-

quired to justify the imposition of rent controls ceased to exist in the City of Miami Beach; or

3. the ordinance was unconstitutional as applied to luxury apartments, because the conditions required to justify the imposition of rent controls upon luxury apartments could not have existed or did not exist in the City of Miami Beach?

Ordinance and Constitutional Provision Involved

Ordinance No. 74-2018 is set forth in the copy attached as Appendix C.

This case also involves the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

Appellants own six high-rise, oceanfront apartment buildings located in the City of Miami Beach, Florida (the "City"). The City conceded and the circuit judge found that appellants' buildings are luxury apartments. (R. 810, Transcript of 12/11/75 at 200.)

On December 11, 1974, Ordinance No. 74-2018 was introduced and adopted by the city council. The ordinance purported to roll back and freeze rents for residential housing accommodations at the rates in effect on October 16, 1974. The ordinance did not exempt luxury housing units. The ordinance prohibited any increase in rents except with the approval of a rent control director.

Appellants filed a complaint against the City, on or about December 30, 1974, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, to enjoin enforcement of Ordinance No. 74-2018. Each of the questions presented in this appeal was raised by the complaint (paragraphs 13 and 19), where appellants alleged that the ordinance was invalid or unconstitutional, or unconstitutional as applied to appellants and other landlords who own luxury apartment buildings in the City, under the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States. (R. 13-15)

A trial was held in December, 1975. Appellants introduced evidence that a wide range of types of housing accommodations at varying rents were readily available, that a housing surplus had developed and that landlords were experiencing unparalleled distress. The evidence established that rental markets in the City were very fluid, characterized by a mobile population and relatively high turnover rates. Eviction activity was relatively low and vacancy rates were reasonable and normal. At the time of trial, vacancy rates in typical garden apartments exceeded 10% and as many as 10% of the condominiums were readily available for rent.

Appellants introduced into evidence a comprehensive study of the luxury housing market, which was conducted in January and February, 1975. (Plaintiffs' Exhibit No. 3 filed 12/10/75.) The study was prepared by Dr. George Sternlieb, Director of the Center of Urban Policy Research at Rutgers University.

Luxury apartments in the City and its environs are located generally in high-rise buildings and many, like those

owned by appellants, are located on the ocean or other water-front property. The buildings and grounds are lavishly decorated and landscaped, with such amenities as beach facilities, swimming pools, tennis courts, boat docks, party rooms and other recreational or social facilities. Luxurious services, such as doormen, valets and maids, are provided for the tenants. The tenants are wealthy or have high incomes from business and investment interests in other states. Most of them use their Miami Beach apartments as secondary homes or vacation retreats, or have retired from active business. They are able to afford and demand the most lavish housing, and move readily to other accommodations whenever more luxurious facilities and services become available.

Because of the wealth, mobility and desires of the luxury housing tenants, there is intense competition among rental apartments and between rental apartments and condominiums, both within the City and in its environs. Dr. Sternlieb's study established the existence of a distinct luxury housing market consisting of rental units and unsold condominium apartments in the "Greater Miami Beach Market Area," which extends beyond the city limits into nearby areas and municipalities.

During the winter season there is an influx of tenants, particularly in the luxury oceanfront rental complexes in the City. Dr. Sternlieb found that the vacancy rate in those units was 3.1% in February, 1975, at the height of the season, while the vacancy rate for luxury housing generally was 5.3% in the city limits and 6.7% in the market area. He testified that these rates were well within normal limits and were not indicative of any emergency. In consideration of all the evidence, Dr. Sternlieb testified unequivocally that there was no emergency in luxury housing in the City. (Transcript of 12/10/75 at 67.)

The City did not introduce any evidence or controvert any of the evidence offered by appellants. The evidence showed conclusively that no emergency existed or could have existed in luxury housing. The characteristics of luxury rental housing in the City preclude the existence of conditions such as overcrowding of particular units, rent profiteering or "gouging," abuse of legal process or increased eviction activity for the purpose of increasing rents, and unsafe or unsanitary housing, which are necessary to establish the existence of the required housing emergency. In any event, appellants showed that the application of rent controls to luxury housing in Miami Beach is unnecessary and exceeds any legitimate purpose or object of Ordinance No. 74-2018.

At the close of appellants' case, the circuit judge granted the City's motion for judgment in its favor. The judge disregarded appellants' uncontroverted evidence on the ground that it showed conditions which existed in or after February, 1975, rather than conditions in existence on December 11, 1974, the date the ordinance was adopted. (Transcript of 12/11/75 at 260-63.) By dismissing the case with prejudice, the judge necessarily upheld the validity of the ordinance under the Constitution of the United States.

The final judgment of dismissal was upheld on appeal by the District Court of Appeal of Florida, Third District. The assignments of error and appellants' brief in the District Court of Appeal raised each of the questions presented in this appeal. In its opinion, the District Court of Appeal passed on the question of the unconstitutionality of the or-

dinance as applied to luxury apartments by ruling that a distinction as to luxury apartments was neither required nor permitted. The District Court of Appeal passed on the other questions by reference to its opinion of the same date in *Lifschitz v. City of Miami Beach*, a copy of which is attached hereto as Appendix D. In the *Lifschitz* opinion, the District Court of Appeal upheld the ordinance as valid, as against the claim that it was not properly adopted in accordance with Section 9 of the City charter and the claim that the rent controls imposed by the ordinance were unconstitutional because they were not justified by the existence of a housing emergency. These holdings were based upon the recitations in the preamble to the ordinance, the presumptive validity of ordinances generally, and evidence in the *Lifschitz* case of such factors as "a scarcity of housing, accelerating rents and a constant influx of people seeking housing in the area."

Each of the questions presented in this appeal was raised in the Supreme Court of Florida by appellants' petition for a writ of certiorari to review the decision of the District Court of Appeal of Florida, Third District. The Supreme Court of Florida denied appellants' petition for certiorari on the ground that it lacked jurisdiction. Under the Constitution of the State of Florida, the jurisdiction of the Supreme Court of Florida to review a decision of a district court of appeal is limited to cases in which the decision of the district court of appeal is in direct conflict with another decision of the Supreme Court or a district court of appeal.

The Questions Are Substantial

For the purposes of this Court's jurisdiction under 28 USC § 1257, a municipal ordinance is treated as a state statute.

This Court has jurisdiction because the District Court of Appeal upheld Ordinance 74-2018 as against appellants' claims that the ordinance is repugnant to the Constitution of the United States. *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975); *King Mfg. Co. v. City Council of Augusta*, 277 U.S. 100 (1928). *See also Talley v. California*, 362 U.S. 60 (1960) (certiorari proceeding).

State statutes or municipal ordinances restricting private property rights violate the due process clause of the Fourteenth Amendment to the United States Constitution, unless the restrictions are both necessary and proper to accomplish legitimate purposes. This Court recently held that legislation affecting contract rights can be sustained only if it is "both reasonable and necessary." *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). This Court will invalidate municipal ordinances which unnecessarily or unreasonably interfere with rights protected by the due process clause of the Fourteenth Amendment. *See Moore v. City of East Cleveland*, 431 U.S. _____, 45 U.S.L.W. 4550 (1977).

Rent controls, by their nature, are a severe restriction and impairment of property rights. The courts have consistently held that rent controls are unconstitutional unless they are justified by the existence of:

> a social emergency . . . so grave that it constitute[s] a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state. . . .

Levy Leasing Co. v. Siegel, 258 U.S. 242, 245 (1922). *See Woods v. Miller*, 333 U.S. 138 (1948); *Bowles v. Willingham*, 321 U.S. 503 (1944); *Chastleton Corp. v. Sinclair*, 264

U.S. 543 (1924); *Brown Holding Co. v. Feldman*, 256 U.S. 170 (1921); *Block v. Hirsh*, 256 U.S. 135 (1921). An increase in the cost of living or an inflationary spiral is not sufficient to justify rent controls. *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 548 (1924). The type of emergency required to justify rent controls is a housing shortage which is producing overcrowding of individual housing units, rent profiteering or "gouging," abuse of legal process and increased eviction activity for the purpose of increasing rents, and unsafe or unsanitary housing. *Levy Leasing Co. v. Siegel*, 258 U.S. 242, 245 (1922).

Recitations of an emergency in the preamble to a rent control statute or ordinance are not sufficient, since the Constitution requires actual existence of the emergency conditions. *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924). The evidence in the instant case made at least a prima facie case that the required emergency did not exist. By rejecting the evidence and upholding the ordinance on the basis of the recitations, the trial court and the District Court of Appeal failed to give effect to the appellants' rights under the due process clause of the Fourteenth Amendment.

Even if the required emergency existed at the time the ordinance was adopted on December 11, 1974, the ordinance became invalid or unenforceable when the emergency ceased to exist. The evidence showed that it did not exist in February, 1975, or at the time of the trial in December, 1975. In *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-548 (1924), this Court stated the rule:

> A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts

> change, even though valid when passed. . . .

By rejecting the evidence on the ground that it did not show that no emergency existed on the exact date the ordinance was adopted, the circuit court failed to follow the rule stated in *Chastleton Corp. v. Sinclair*.

As shown above, rent controls and other governmental restrictions on private property rights must be limited to what is both necessary and proper to the legitimate purposes and objects of the legislation. Application of rent controls to luxury housing in Miami Beach is unnecessary *and* improper. It exceeds any legitimate purpose or object of rent controls.

The evidence proved that no emergency existed or could have existed in luxury housing in the City of Miami Beach. Under similar circumstances, the federal district court in *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874 (D.V.I. 1961), struck down the application of a rent control law to luxury accommodations because the court found that there was no "acute shortage" or "emergency" in the high-rental or luxury market. Therefore, the application of rent controls to luxury housing was unconstitutional as a violation of due process of law. *See also Russell v. Treasurer & Receiver General*, 331 Mass. 501, 120 N.E.2d 388 (1954), which upheld a state rent control statute excepting housing accommodations with a monthly rent of more than $150.

In summary, the decisions of the courts below are not in accord with applicable federal decisions. This appeal presents substantial federal questions which should be decided by this Court, after briefs on the merits and oral argument.

Conclusion

This Court has jurisdiction under 28 U.S.C. § 1257(2). Substantial federal questions are presented and, therefore, the Court should note probable jurisdiction.

Respectfully submitted,

JOHN K. AURELL, ESQUIRE
1401 First Federal Bldg.
One Southeast Third Ave.
Miami, Fla. 33131
(305) 358-5550

EARL B. HADLOW
P.O. Box 4099
Jacksonville, Fla. 32201

Attorneys for Appellants

MAHONEY HADLOW & ADAMS
P.O. Box 4099
Jacksonville, Fla. 33201

1401 First Federal Bldg.
One Southeast Third Ave.
Miami, Fla. 33131

Of Counsel

APPENDIX

APPENDIX A
[Reported at 348 So.2d 950]

IN THE SUPREME COURT OF FLORIDA
TUESDAY, JULY 19, 1977

CASE NO. 50,721

STEPHEN MUSS, et al.,

Petitioners,

vs.

CITY OF MIAMI BEACH, etc.,

Respondent.

On consideration of petitioners' Petition for Rehearing and response thereto, it is ordered that said petition is denied.

OVERTON, C.J., ENGLAND, SUNDBERG, HATCHETT, AND KARL, JJ., CONCUR

ADKINS AND BOYD, JJ., DISSENT

APPENDIX A
[Reported at 348 So.2d 950]

SUPREME COURT OF FLORIDA
FRIDAY, MAY 6, 1977

CASE NO. 50,721

DISTRICT COURT OF APPEAL,
THIRD DISTRICT
75-1998

STEPHEN MUSS, et al.,

Petitioners,

vs.

CITY OF MIAMI BEACH, etc.,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur
ADKINS and BOYD, JJ., dissent

APPENDIX A
[Reported at 339 So.2d 236]

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1976

WEDNESDAY, NOVEMBER 24, 1976

CASE NO. 75-1998

STEVEN MUSS, etc., et al.,

Appellants,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Appellee.

Counsel for appellants having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

APPENDIX A
[Reported at 339 So.2d 236]

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1976

CASE NO. 75-1998

STEVEN MUSS, etc., et al.,

Appellants,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Appellee.

Opinion filed October 12, 1976.

An Appeal from the Circuit Court for Dade County, David Popper, Judge.

Sibley, Giblin, Levenson & Ward; Rubin, Baum, Levin, Constant & Friedman, for appellants.

Joseph A. Wanick, City Attorney; Richard Kanner; Ritter & Ritter, for appellee.

Pallot, Stern, Proby & Adkins, amicus curiae.

Before HENDRY and NATHAM, JJ., and SACK, MARTIN, Associate Judge.

PER CURIAM.

This is a companion case to *Lifschitz v. City of Miami Beach, Florida,* opinion rendered this day. Here the Plaintiffs-Appellants, as the owners of six luxury high-rise apartment buildings on Miami Beach, also attack the Miami Beach Rent Stabilization Law.

With one exception, the points of attack are the same as in *Lifschitz;* and, as in *Lifschitz,* the Trial Court dismissed the Plaintiffs' action for an injunction, after final hearing. Our rejection of the attack is fully set forth in *Lifschitz,* and we now consider Appellants' additional contention that rent control cannot be constitutionally applied to the luxury rental market. This contention is advanced on the basis of the Plaintiffs' assertion that there is no housing emergency existing as to luxury apartments and that affluent tenants can afford to pay whatever the traffic will bear for that type of accommodation. No authority is cited to support such a proposition; the Trial Court found, as a matter of fact, that the emergency found to exist city-wide in the preamble to the Rent Stabilization Act had not been overcome by Appellants' testimony. Nor do we think that it was necessary for the City Council of the City of Miami Beach to fragmentize the city and examine, neighborhood by neighborhood, each apartment building to ascertain whether the public emergency existed as to each apartment unit or in each economic bracket in order to arrive at a city-wide conclusion. The fact that the more affluent tenant may not be as deeply affected or to the same degree is not a valid criterion and is not sufficient to invalidate the legislation. See, for example, *Albigese v. Jersey City,* 316 A.2d 483, 487 (1974); *Troy Hills Village v. Township Council,* 350 A.2d 34, 41 (1975); *Westchester West No. 2 Ltd. Part. v. Montgomery Cty.,* 348 A.2d 856, 859 (1975). In short, the same reasons which required the emergency legislation as to the less affluent also apply to the more affluent.

Accordingly, the order on appeal is affirmed.

NATHAN, J., concurs in the result only.

APPENDIX A

CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA
GENERAL JURISDICTIONAL DIVISION

No. 74-37360, Division 12

FINAL JUDGMENT OF DISMISSAL

STEPHEN MUSS, etc. et al

Plaintiffs,

vs.

CITY OF MIAMI BEACH,
FLORIDA,

Defendant.

This cause is before the court upon the defendant's motion for the court to enter judgment for the defendant pursuant to Civil Rule 1.420, and the court having heard the evidence presented by the plaintiff, and after consideration of the arguments of counsel, and being otherwise duly advised, finds

1. The ordinance was properly adopted pursuant to the governing charter provisions.

2. The plaintiffs have presented no evidence that the city was not justified in declaring on December 11, 1974 that a grave and serious public emergency existed with respect to rental housing.

3. Municipal ordinances are presumed constitutional, and this court cannot substitute its judgment for that of the Miami Beach City Council.

Pursuant to the foregoing findings

IT IS ADJUDGED that the plaintiffs in this cause and the intervening plaintiffs in this cause take nothing by their actions, and that the defendant, City of Miami Beach, Florida go hence without day and recover its costs for which purpose the court reserves jurisdiction.

DONE AND ORDERED December 12, 1975.

/s/ DAVID POPPER
Circuit Judge

APPENDIX B
[Filed on July 21, 1977]
IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO. 75-1998

STEPHEN MUSS, CHARLES H. ROSENBERG, individually, and STEPHEN H. MUSS, DEBORAH MORGAN, and CYNTHIA ROSENBERG, as the Executors of the Last Will and Testament of Alexander Muss, a partnership doing business under the name and style of SEACOAST TOWERS WEST and SEACOAST TOWERS V, and ALEXANDER MUSS & SONS, INC., a New York corporation authorized to do business in the State of Florida doing business under the names and styles of SEACOAST TOWERS NORTH, SEACOAST TOWERS SOUTH and SEACOAST TOWERS EAST, and E. J. FRANKEL, LEONARD FRANKEL, BENJAMIN FRANKEL, WILLIAM FRANKEL, REUBIN ROSEN and MAURICE ROSEN, a partnership doing business under the name and style of RONEY PLAZA APARTMENTS,

Appellants,

vs.

CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Stephen Muss, Deborah Morgan, and Cynthia Rosenburg, as the Executors of the Last Will and Testament of Alexander Muss, a partnership doing business under the name and style of Seacoast Towers West and Seacoast Towers V, Alexander Muss & Sons, Inc., a New York corporation authorized to do business in the State of Florida doing business under the names and styles of Seacoast Towers North, Seacoast Towers South and Seacoast Towers East, and E. J. Frankel, Leonard Frankel, Benjamin Frankel, William Frankel, Reubin Rosen and Maurice Rosen, a partnership doing business under the name and style of Roney Plaza Apartments, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment, decision and opinion of the District Court of Appeal of Florida, Third District, affirming the final judgment of dismissal, dated and entered in this action on October 12, 1976, and recorded in Book 68, page 257, rehearing denied November 24, 1976, appellants' petition for certiorari having been denied by the Supreme Court of Florida on May 6, 1977, rehearing denied on July 19, 1977.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

All parties to this action are called upon to take notice of this appeal.

MAHONEY HADLOW & ADAMS

/s/ _____

Earl B. Hadlow, of Counsel
Attorneys for Appellants

Post Office Box 4099
Jacksonville, Florida 32201
Telephone: (904) 354-1100

APPENDIX C

ORDINANCE NO. 74-2018

AN ORDINANCE REPEALING EXISTING CHAPTER 17A OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING FOR THE STABILIZATION OF RENTS OF HOUSING ACCOMMODATIONS; DECLARING THE EXISTENCE OF AN EMERGENCY REQUIRING SUCH REGULATION; PROVIDING DEFINITIONS; IMPOSING A MAXIMUM OF RENT CHARGEABLE FOR HOUSING ACCOMMODATIONS; FREEZING RENTALS FOR HOUSING ACCOMMODATIONS AS OF OCTOBER 16, 1974; CREATING THE OFFICE OF RENT DIRECTOR; AND SETTING FORTH HIS RIGHTS AND POWERS, INCLUDING THE ADOPTION OF RULES AND REGULATIONS; THE ENTRY OF ORDERS FIXING MAXIMUM RENTS AND ADJUSTING RENTS; PROVIDING FOR STATUTORY TENANCY; THE RECOVERY OF OVERCHARGES; PROVIDING PENALTIES; CREATING THE RENT STABILIZATION ADVISORY COMMITTEE; EXEMPTING CERTAIN HOUSING ACCOMMODATIONS; PROVIDING FOR THE SURVIVORSHIP OF CLAIMS; PROVIDING FOR THE TERMINATION OF THIS ORDINANCE; AND SAVING ALL REMEDIES WHICH ACCRUED UNDER THIS ORDINANCE; PROVIDING SEVERABILITY CLAUSE, REPEAL CLAUSE AND EFFECTIVE DATE AND DURATION OF THIS ORDINANCE; AND PROVIDING FOR THE ADOPTION HEREOF AS AN EMERGENCY ORDINANCE.

WHEREAS, the Florida Supreme Court has held the ex-

isting Chapter 17A of the Code of the City of Miami Beach to be void and invalid for lack of legislative or charter authority to enact the same, and the legislature of the State of Florida having at its 1973 Session duly enacted Chapter 73-129 granting such legislative and charter authority to the municipalities of the State of Florida which authority has been held to include the authority to enact rent control legislation; and

WHEREAS, a grave and serious public emergency exists with respect to the housing of a substantial number of citizens of Miami Beach; and

WHEREAS, the deterioration and demolition of existing housing; an insufficient supply of new housing; the inhibition upon the construction of new housing resulting from the operation of the Florida Pollution Control Act, other environmental protection laws, and an insufficient supply of financing; and the existing economic inflationary spiral have resulted in a substantial and critical shortage of safe, decent and reasonably priced housing accommodations as evidenced by the low vacancy rates prevailing in the City; and

WHEREAS, this emergency cannot be dealt with effectively by the ordinary operations of the private rental housing market, and unless residential rents are regulated, such emergency and the inflationary pressures therefrom will produce a serious threat to the public health, safety and general welfare of the citizens of Miami Beach, Florida;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA, that existing Chapter 17A of the Code of the City of

Miami Beach, Florida, is deleted and the following substituted therefor:

SECTION 1. Short Title.

This Ordinance shall be known and may be cited as the Rent Stabilization Law.

SECTION 2. Definitions.

Unless a different meaning clearly appears from the context, the following terms shall mean and include:

A. Administration - The Miami Beach Rent Control Administration.

B. Director - There is hereby created the office of the Director of the Miami Beach Rent Control Administration. The Director shall be appointed by the City Manager and shall receive a salary in accordance with the prevailing salary structure provided to department heads in the unclassified service of the City. The City Manager shall establish offices, purchase supplies and equipment and authorize the Director to employ such personnel, including legal counsel, subject to the approval of the City Manager, as may be necessary for the performance of his functions under this Ordinance. The Director shall submit a semi-annual report to the City Manager for transmittal to the City Council, which report shall include the Director's recommendations, if any, relating to the amendment of this Ordinance, and his findings and recommendations as to the continued existence or termination of grave and serious emergency conditions with respect to the various classes of the private rental housing market.

C. Advisory Committee - An Advisory Committee is hereby created to consist of no less than seven members. The membership of the Board shall consist of two (2) landlords, two (2) tenants and three (3) homeowners representing the general public. Each member of the Committee shall be appointed by a majority vote of the City Council. The members of such committee shall hold office for a term of one (1) year, and shall serve without compensation. The Advisory Committee shall consider recommendations for proposed changes of this Ordinance upon their own initiative and such recommendations as may be submitted by organizations, associations and civic groups concerned with rent control and housing conditions. The Committee shall not consider individual cases, but merely general recommendations in preparing its report to the City Council. Any and all recommendations for amendments of this Ordinance and the Committee's opinion and advice upon these recommendations shall be reported to the City Council at least once in every four-month period. A copy of the recommendations and committee's opinions shall be served upon the Rent Director prior to consideration by the City Council.

D. Housing Accommodation - A residential unit in any building containing three or more residential rental units in which said units are occupied or intended to be occupied by one or more individuals as a residence, together with the land and buildings appurtenant thereto; and all services, privileges, furnishings, furniture and facilities supplied in connection with the occupation thereof, including garage and parking facilities. The term "housing accommodation" shall not include:

(1) Dwelling units located in a structure completed or substantially rehabilitated or newly con-

verted on or after October 16, 1974. Where an occupancy permit is required to be issued, there shall be a rebuttable presumption that completion is the date of issuance of the permit. If no such permit is required, completion shall be the date the housing accommodation is offered for rent in habitable condition.

(2) Dwelling units located in a boarding house, hotel, motel, lodginghouse or rooming house except where the occupants thereof, on the freeze date, had been occupying their housing accommodation under a lease whose term is not less than one year, or have been in continuous occupancy for at least one year, or for which rent has been paid for one continuous year. Upon vacancy, the unit shall no longer be subject to the provisions of this Ordinance; for the purpose of this Ordinance, a rooming house is hereby defined as being any building containing not more than ten (10) rooms intended to be used, and used, rented or occupied for sleeping purposes by transient guests only.

(3) Dormitories operated by any hospital, convent, monastery, asylum, public institution, educational institution, or any institution operated exclusively for charitable or educational purposes on a non-profit basis

(4) Dwelling units subject to condominium or cooperative ownership; unless three or more of said units are owned by an individual for the purpose of renting on a yearly basis.

(5) Public housing accommodations.

(6) Dwelling units customarily rented on a seasonal basis where: (1) the dwelling unit is rented only for a short seasonal period at a seasonal rental; or

where (2) in addition to being rented for a short seasonal period at a seasonal rental, it is also rented for the remainder of the year or a part thereof to a tenant or tenants other than the tenant or tenants who had rented for the seasonal period, at a rental substantially lower than the seasonal rental. To qualify under this paragraph, the housing accommodation must have been rented on a seasonal basis for a period of time between October 16, 1973 and October 15, 1974. Exclusion from control under this Ordinance shall not apply to any housing accommodation where on October 16, 1974, the occupants thereof had been occupying their housing accommodation under a lease whose term is not less than one year, have been in continuous occupancy for one year, or for which rent has been paid for one continuous year, regardless of the method or amount of rent payment which had been agreed upon by the landlord and the tenant.

The dwelling unit shall not come within the definition of "housing accommodation" only so long as it shall continue to be rented on a seasonal basis. Upon termination of such rental practice, the maximum rent shall be established on a monthly basis by the Director based upon the maximum rent for comparable accommodations with consideration given to the factors provided in Section 5(D). The seasonal renting period shall be the period of the winter season, a period not exceeding six (6) months and generally including the months of December, January, February and March.

E. Freeze Date - October 16, 1974 is hereby declared to be the date upon which maximum rent ceilings and minimum service standards shall be determined as described below.

F. Freeze Date Maximum Rent - Subject to such adjustments as may be made pursuant to Sections 4 and 5, maximum rent ceilings and minimum service standards for housing accommodations in the City shall be the following:

(1) For housing accommodations rented on October 16, 1974, the rent and services to which the landlord and tenant were entitled on that date.

(2) For housing accommodations not rented on October 16, 1974, but which had been rented within the year ending on that date, the rent and services to which the landlord and tenant were last entitled within such year.

(3) For housing accommodations not rented on October 16, 1974, or within the year ending on that date, the rent and services first agreed upon.

G. Immediate Family - Parents, step-parents, children, or step-children of either spouse.

H. Rent - The consideration including any bonus, benefits or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units.

I. Services - Repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, electric services, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, parking, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a

proportionate part of services provided to common facilities of the building in which the rental unit is contained.

J. Minimum Service Standards - Those services which were provided on October 16, 1974.

SECTION 3. Maximum Rent Ceiling - Minimum Service Standards.

It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into for any person to demand or receive any rent for housing accommodations in excess of the maximum rent ceiling, or refuse to supply any service required by the minimum service standards, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing.

SECTION 4. General Powers and Duties of the Director.

A. (1) Whenever the Rent Director shall determine that a general increase or decrease since October 16, 1974, in taxes, or other maintenance, or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally he may by regulation or order increase or decrease the maximum rent ceiling or minimum service standard,or both, for such accommodations thereof in such manner or amount as will compensate for such general increase or decrease so as to provide a fair return to the landlord and a fair rental to the tenant. Thereupon, such adjusted ceiling or standard shall be the maximum rent ceiling or minimum service standard for the housing accommodations subject thereto.

Before promulgating any regulation or making any determination under this Section, the Director shall hold a public hearing at which all interested parties shall be heard. The Director shall cause all interested parties to be notified either by mail or publication in a newspaper of general circulation in the community at least fourteen (14) days prior to the date of hearing. Such notice shall contain a statement of time, place and nature of the hearing, and contain a short and plain statement of the matters to be considered at the hearing; if the rent Director is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than three (3) days prior to the date set for the hearing.

(2) The Director shall have the authority to promulgate such regulations as he deems necessary to carry out the intent of this Ordinance; but no such regulation shall be promulgated or enforced without first having held a public hearing as provided in this Ordinance.

(3) The Director or any officer or agent designated by the Director, may administer oaths and affirmations and may, whenever deemed necessary, by subpoena, require any person to appear and testify, or to appear and produce documents, or both, at any designated place, may require persons to permit the inspection and copying of documents, and the inspection of housing accommodations; and may by regulation or order, require the making and keeping of records and other documents. Any person subpoenaed shall have the right to make a record of his testimony and to be represented by counsel. In case of refusal to obey a subpoena served upon any person,

upon application of the Director, the Municipal Court shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Parties to a proceeding pursuant to Section 5 shall submit written documentation to support their positions, and the Director may require further documentation as he deems necessary. The Director may require that submissions be verified or affirmed by the submitting parties, where the authenticity of the submissions is in question.

Any party or person involved in any proceeding before the Director shall have the right to be represented by counsel. The Director may consolidate proceedings involving the same units, structures or parties or where the issues involved are substantially the same.

(5) The Director shall have the authority to seek injunctive relief, when such action is considered necessary to effectuate the purposes of this Ordinance.

(6) The Director may issue a prior opinion in response to a written request from a landlord as to whether certain contemplated actions would constitute a violation of the Ordinance.

B. Each landlord shall, within (60) days after adoption of this Ordinance, unless such time is extended by the Director, file with the Director, on forms prescribed by him, registration statements setting forth the freeze date

maximum rents, essential services and equipment, current taxes assessed, gross rent rolls on freeze date, and such other data as the Director shall consider necessary to effectuate the purposes of this Ordinance. Failure to timely file shall be considered a willful violation of this Ordinance and subject the landlord to a fine of Five Hundred (500) Dollars for each housing accommodation for which no registration statement is timely filed. In such case, the Director shall establish the maximum rent as of October 16, 1974, or date of first renting, whichever is later, based upon a comparability study of similar apartments and after consideration of the factors provided in Section 5(D). A registration statement shall also be filed for each vacant apartment which had been previously rented and upon renting, the landlord shall, within thirty (30) days after such renting, notify the Director in writing of the rental being charged and the name of the tenant. No application for an increase in the maximum rent shall be accepted by the Director until registration statements have been filed.

SECTION. 5 Rent Adjustments.

A. Any landlord may petition the Director to adjust the maximum rent ceiling or minimum service standards applicable to his housing accommodations where:

(1) The landlord and tenant, by mutual voluntary written agreement, consent to an increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided to the housing accommodations; or

(2) There has been a major capital improvement, completed on or after October 16, 1974, or within one year prior to the effective date of this Ordi-

nance; or

(3) There has been a substantial improvement including furniture and furnishings or alteration made since October 16, 1974.

B. The Director shall presume that rents for housing accommodations in the City in effect on October 16, 1974, were established at levels which yielded to owners a fair rate of return for such units; but upon petition by the landlord, the Director shall grant increases in rents if he finds that:

(1) It is established that unique or peculiar circumstances existed which resulted in a freeze date maximum rent substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations; or

(2) There has been a substantial rise in operating expenses; or

(3) The rental income from the housing accommodations is insufficient to enable the landlord to maintain approximately the same ratio between operating expenses allocable to the housing accommodations and the gross rent received from those accommodations which prevailed on October 16, 1974; or

(4) That due to some factor or factors which are specifically stated by the landlord in his petition, including the inability of the landlord to meet his mortgage payments and maintenance, the landlord is unable to receive a fair rate of return and such factors are not reasonably within the control of the landlord.

C. Any tenant may petition the Director to adjust the maximum rent ceiling or minimum service standards applicable to his housing accommodations where:

(1) Due to peculiar circumstances affecting such accommodations, the maximum rent ceiling is substantially higher than that generally prevailing for comparable housing accommodations; or

(2) The service supplied is less than that established by the minimum service standard for the housing accommodations; or

(3) The maximum rent ceiling permits the receipt of unduly high rent when compared to the prevailing maximum rent ceiling of similar housing accommodations providing similar services.

D. In entering any order pursuant to Sections 5(B) or 5(C) determining a fair rate of return or fair rent, the Rent Director shall consider, among other things, the fair market value of the property at the time of entering such order. He may consider original cost, as well as cost of reproduction and may also consider rental value. He shall also consider the gross rentals received by the landlord, expenses including taxes, insurance, janitorial services, repairs, utilities, if any, and annual charges for mortgage interest and amortization. In no event shall the Director enter any order which will result in confiscation of the landlord's property or deprive him of a reasonable return on the value of his property, nor, in any event, shall such order fix a rental rate which will yield a rate of return less than the rate of return generally obtained in the City as a return upon capital invested in housing accommodations in the City.

E. Any tenant may petition the Director on the grounds that the service supplied to him is less than the service established by the minimum service standard for his housing accommodations; whereupon the Director may order that the service be maintained at such minimum service standard, or that the maximum rent ceiling be decreased to compensate for a reduction in service, as he deems necessary or appropriate to carry out the purposes of this Section.

F. Any landlord may petition the Director for permission to reduce the service supplied by him in connection with any housing accommodations; whereupon the Director, if he determines that the reduction of such service is to be made in good faith for valid purposes of this section, may by order, reduce the minimum service standard applicable to such housing accommodations and adjust the maximum rent ceiling downward in such amount as he deems proper to compensate therefor.

G. Any tenant may petition the Director to adjust the maximum rent ceiling applicable to his housing accommodations on the ground that such maximum rent ceiling permits the receipt of an unduly high rent; whereupon the Director may, by order, adjust such maximum rent ceiling in such manner or amount as shall effectuate the purposes of this chapter and provide a fair and reasonable rent for such housing accommodations, but not less than the amount required to provide a fair return to the landlord and not less than the generally prevailing rate for comparable housing accommodations.

H. A petition made pursuant to this Section shall be subject to the provisions of Section 8 of this Ordinance. Any adjusted maximum rent ceiling or minimum

service standard entered pursuant to this Section shall be the maximum rent ceiling or minimum service standard for the housing accommodations subject thereto; except that, in the event that the adjustment order is stayed or set aside by the court in accordance with Section 8 of this Ordinance, the maximum rent ceiling and minimum service standard theretofore applicable to such housing accommodations under this Ordinance remain in full force and effect.

I. Any rent adjustment shall be effective as of the first day of the month following the issuance of the determination by the Director. However, no rental increase is collectible during the term of any lease unless such lease specifically provides for such increase.

J. No petition pursuant to Sections (A) and (B) above shall be granted unless the landlord is substantially maintaining the minimum service standards applicable to his housing accommodations.

SECTION 6. Modification of Determination.

The Director, prior to commencement of a proceeding for judicial review, and prior to the execution of a warrant in a summary proceeding to recover possession of real property, may revoke, modify or supersede any determination issued where it is found that such determination was the result of a mistake of fact, fraud, illegality or irregularity in vital matters.

SECTION 7. Evictions.

A. No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the

tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless:

(1) The tenant is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes; or

(2) The tenant is failing to comply with any of the provisions for which eviction is permitted pursuant to Florida Statutes Chapter 83, except where this Ordinance provides otherwise.

(3) The landlord seeks in good faith to recover possession of the property for his immediate and personal use or occupancy as a dwelling; or for the use and occupancy of any member of his immediate family.

(4) The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the property and replacing it with new construction in accordance with plans filed with and approved by the building department of the City.

(5) The landlord seeks in good faith to permanently withdraw the housing accommodations from the housing market without any intent to rent or sell all or any part of the rental unit or structure.

B. Except as provided in Section 7(A), it shall be unlawful for any person to remove, or attempt to remove, from any housing accommodation the tenant or occupant thereof, or to refuse to renew lease or agreement for the use

of such accommodations, because such tenant or occupant has taken or proposes to take action authorized or required by this Ordinance or any regulation, order or requirement adopted hereunder. So long as the tenant continues to pay the applicable rent payable by him for the housing accommodations occupied by him, he may not be removed or evicted therefrom, notwithstanding the expiration of any lease. Such tenant shall pay the lawful rent fixed for his housing accommodations on the first day of each month so long as he remains in possession and shall be required to give the landlord fifteen (15) days' written notice of his intention to vacate said premises, otherwise he shall be liable to the landlord for one month's rent. No landlord may institute eviction proceedings pursuant to Section (A) (3, 4 & 5) until he has filed a petition for an eviction certificate with the Rent Director setting forth the grounds for such proposed action, and an eviction certificate has been issued by the Rent Director; the Director shall issue such certificate only if he finds that the landlord is entitled to such certificate under the provisions of this Section. No such eviction certificate shall be required prior to the institution of eviction proceedings pursuant to Section 7(A)(1 & 2), or where the tenant has failed to pay his rent.

SECTION 8. Administrative Procedure.

A. Any petition filed by a landlord or tenant under Section 5 shall be promptly considered by the Rent Director. The Director may by regulation provide that, in the absence of a request by any interested party for a public hearing, decisions shall be rendered upon the petition, response, supporting affidavits and briefs submitted by the interested parties. If the petition fails to state any grounds upon which the action requested could be granted, the Director shall dismiss the petition upon his own initia-

tive, without predudice to the right to re-file an appropriate petition. The Director shall notify in writing all parties involved as to whether the petition has been dismissed or if no hearing has been requested, the decision of the Director upon the petition. The decision shall specify the findings of fact and reasons upon which the decision is based. Copies of such order of dismissal or findings and decision shall be served upon the parties involved in such manner as the Director may prescribe by regulation.

B. Any person subject to the provision of any order issued by the Director, must, prior to seeking judicial review, file a petition for reconsideration to the Director within thirty (30) days from the date of issuance of such order. The petition shall set forth concisely the alleged omissions, oversights, causes or grounds upon which it is based. If there be no such request within thirty (30) days, the findings and order of the Rent Director shall de deemed final.

C. Upon request of any party involved in a proceeding pursuant to Section 5, the Director shall grant a hearing, but before making any determination, all parties shall be afforded an opportunity for hearing after reasonable notice by mail of not less than fourteen (14) days, which shall include: (1) a statement of the time, place and nature of the hearing; and (2) a short and plain statement of the matters asserted by all parties of record at the time notice is given.

D. At the hearing, all parties shall have an opportunity to respond, to present evidence and argument on all issues involved or to file written statements, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to

any order or recommended order, and to be represented by counsel. Due regard shall be given to the utility and relevance of the information offered and the need for expedition. In any such hearing, the common law rules of evidence shall not be controlling. When appropriate, the general public may be given an opportunity to present oral or written communications. If the Director proposes to consider such material then all parties shall be given an opportunity to cross-examine, challenge or rebut it. All final orders entered by the Director shall be conclusive and binding upon the parties and the aggrieved party shall be entitled, as of right, to appeal to a court of competent jurisdiction.

E. The Director shall take minutes of the testimony presented and shall incorporate by reference all documentary evidence and exhibits submitted. Any party shall be permitted, at his own cost, to have a stenographic record made of the hearing by a Certified Shorthand Reporter, provided that a copy of such record shall be supplied to the Director to be made a part of the file.

SECTION 9. Payment of Rent During Petition and Appeal.

Payment of rent by the tenant and acceptance by the landlord shall be without prejudice to the right of the landlord to apply to the Rent Director for an increase and the right of the tenant to apply for a decrease in the amount payable. In the event the landlord refuses to accept the rent payable under the provisions of this Ordinance, and brings an action against the tenant for non-payment of rent, the tenant shall pay unto the registry of the court the amount of rent payable under the provisions hereof, and the tenant shall be entitled to plead as a defense that the landlord re-

fused to accept the rent payable under the provisions hereof; or that the landlord has not applied for a determination by the Rent Director; or that the Rent Director has not yet rendered an order fixing the authorized rent.

SECTION 10. Overcharges.

A tenant who has paid rent in excess of the rent authorized under this Ordinance shall have a right to recover such overcharge, and where such overcharge is willful and intentional, the tenant shall be entitled to institute an appropriate action in a court of competent jurisdiction for double the amount of such overcharge. The prevailing party shall be entitled to recover reasonable attorney's fees. Such action must be brought within two (2) years from the date of the overcharge.

SECTION 11. Prohibitions.

A. It shall be unlawful, regardless of any contract, lease or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent for any housing accommodation in excess of the maximum rent or otherwise to do or omit to do any act in violation of any regulation, order or requirement of the Director under this Ordinance or to offer, solicit, attempt or agree to do any of the foregoing.

B. It shall be unlawful for any officer or employee of the Administration or for any official advisor or consultant to the Director to disclose, other than in the course of official duty, any information obtained under this Ordinance or to use any such information for personal benefit.

C. It shall be unlawful for any person to willfully make any false statement or entry in any document or report submitted in any proceeding before the Director or required to be kept or filed under this Ordinance or regulation, order, or requirement thereunder, or to willfully omit or neglect to make any material statement or entry required to be made in any such document or report.

D. Where an order granting a Certificate of Eviction has been issued, it shall be unlawful for a landlord or a successor in interest to use housing accommodations on the site on which same are located for any purposes other than those specified in the certificate of eviction.

E. (1) No landlord shall demand, receive or obtain a security deposit which is in excess of the freeze date monthly maximum rent, or rent in effect on the date of occupancy, whichever is higher, multiplied by the number of months of security held by the landlord for the housing accommodations on October 16, 1974. There shall be no restriction in the amount of security that may be collected for a housing accommodation rented for the first time except that after the collection of such initial security, the provisions of this paragraph shall apply. No additional security may be collected by a landlord nor shall any portion of the security be required to be returned to a tenant based upon subsequent rental adjustments.

(2) Any tenant who fails to give his landlord at least fifteen (15) days' written notice by certified mail prior to vacating his housing accommodation shall be liable to the landlord for the loss of one month's rent, except where the tenant has been removed or has vacated pursuant to this Ordinance.

SECTION 12. Harassment.

A. It shall be unlawful for any person, with intent to cause any tenant to vacate housing accommodations, to engage in any course of conduct, including, but not limited to interruption or discontinuance of minimum services, which interferes with or disturbs the comfort, repose, peace or quiet of such tenant in his use or occupancy of his housing accommodation.

B. It shall be unlawful for any person to remove or attempt to remove a tenant from his housing accommodation because such tenant has taken, or proposes to take, action authorized or required by this Ordinance or any existing building, housing and health codes.

C. If it is found by the Director that a tenant has vacated his housing accommodation as the result of actions which are in violation of paragraphs (A) and (B) of this Section, the tenant shall be permitted to recover in an action at law two times the damages incurred as well as reasonable attorney's fees and court costs. Damages shall include the costs of moving and the differential in rent between that rental which the tenant had been paying prior to vacating and the new rental paid, the differential to be computed for a two-year period. Such action must be commenced within two (2) years from the date of the Director's findings.

SECTION 13. Survivorship.

In the event of the death of a tenant, the rights of such deceased tenant shall inure to the surviving spouse or other person then in occupancy.

SECTION 14. Waiver.

Waiver of the provisions of this Ordinance by the tenant shall be unenforceable and void.

SECTION 15. Decontrol.

Whenever the Director shall find that an emergency nolonger exists with respect to all or any particular class of housing accommodations, he shall recommend to the City Council that the controls imposed on rents and evictions pursuant to this Ordinance should be scheduled for orderly decontrol with due regard to preventing uncertainty, hardship and dislocation. The City Council may only issue such order after the holding of a public hearing at which interested persons are given a reasonable opportunity to be heard.

SECTION 16. Penalty.

Any person who willfully violates any provision of this Ordinance shall, upon his conviction of a first violation, be subject to a fine not to exceed five hundred (500) dollars; and for each subsequent offense, shall be subject, upon his conviction, to a fine up to five hundred (500) dollars and/or imprisonment for a period not to exceed sixty (60) days.

SECTION 17. Remedies Saved.

All causes of action or remedies accrued under this Ordinance prior to the termination of rent regulations shall survive such termination.

SECTION 18. Conflicting Ordinances Repealed.

All ordinances or parts ordinances in conflict herewith be and the same are hereby repealed.

SECTION 19. Severability.

If any provision of this Ordinance, or the application of such provision to any person or circumstance is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision or application of this Ordinance, it being the intent of the City Council that the provisions of this Ordinance shall be deemed severable.

SECTION 20. Effective Date and Duration.

This Ordinance shall go into effect on January 1, 1975, and the regulation of rents hereunder shall remain in effect until the 31st day of December, 1976, unless extended or terminated by the City Council of the City of Miami Beach prior to that date.

SECTION 21. Emergency Measure.

That the City Council of the City of Miami Beach, Florida, having found and determined that a public emergency exists affecting life, health, property or public safety, this Ordinance is hereby adopted as an emergency measure.

PASSED and ADOPTED this 11th day of December, 1974.

/s/ HAROLD ROSEN
MAYOR

(SEAL)

ATTEST:

/s/ ELAINE MATTHEWS
CITY CLERK

Passed and adopted - December 11, 1974

APPENDIX D
[Reported at 339 So.2d 232]
[Rehearing Denied November 9, 1976]

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1976

CASE NO. 76-787

MILTON LIFSCHITZ, et al.,

Appellants,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Appellee.

Opinion filed October 12, 1976.

An Appeal from the Circuit Court for Dade County, Dan Satin, Judge.

Cypen & Nevins and Stephen H. Cypen, for appellants.

Joseph Wanick, City Attorney; Richard A. Kanner; Ritter & Ritter, for appellee.

Carlton, Fields, Ward, Emmanuel, Smith & Cutler (Orlando) for Florida Association of Realtors, Amicus Curiae.

Richard M. White for Miami Board of Realtors, amicus curiae.

Before HENDRY and NATHAN, JJ., and SACK, MARTIN, Associate Judge.

PER CURIAM.

Plaintiffs, Milton Lifschitz and Melvin Schwartz, take this appeal from an adverse final judgment in an action for injunction against the enforcement by the defendant, City of Miami Beach, of Ordinance No. 74-2018, the Rent Stabilization Law.

In *City of Miami Beach v. Forte Towers, Inc.*, 305 So.2d 764 (Fla. 1974), the Supreme Court of Florida ruled that Section 166.021, Florida Statutes, the home rule statute, was constitutionally valid and that the City of Miami Beach was authorized to enact rent control measures, provided sufficient objective guidelines and standards were utilized for delegation of the legislative powers of the City to the rent control administrator. Pursuant to that decision, the City of Miami Beach passed a revised rent control ordinance, which is the subject of the instant action for injunction.

The final judgment in this case contained the following findings of fact: that the City of Miami Beach had the power and legal authority under Section 166.021(1), Florida Statutes, to enact Ordinance 74-2018; that the ordinance was validly enacted in accordance with the mandatory provisions of Section 9 of the Charter of Miami Beach, which provides for the adoption of ordinances to meet public emergencies; that due to the unusual character of Miami Beach, as demonstrated by the evidence, there did exist at the time of passage of the ordinance and thereafter until the time of final hearing, appropriate and sufficient circumstances, conditions and factors to justify its enact-

ment; that Ordinance 74-2018 is neither improper nor an unlawful delegation of the legislative power and authority of the City of Miami Beach, as it provides sufficient and adequate guidelines in its delegation of power to the Rent Control Administrator, as provided in *City of Miami Beach v. Forte Towers, Inc.*, supra; that although certain portions of the ordinance, namely the sections on evictions, prohibitions and survivorship conflict with and are superseded by The Florida Residential Landlord and Tenant Act and the Florida Probate Act (Chapters 83 and 731, Florida Statutes), the evidence reflects that the conflicting provisions are not so mutually connected or dependent upon the rest of the ordinance as to require their continued inclusion to make the rent control provisions work; that the ordinance can be effectively administered without the conflicting provisions; that the evidence failed to prove that the ordinance was vague, indefinite, ambiguous, arbitrary, oppressive, confiscatory, unreasonable or discriminatory, or that it unreasonably impaired the rights of landlords under contracts in existence prior to the effective date of the ordinance.

The first point on appeal concerns whether the ordinance is void because in fact no emergency existed and because the ordinance was not adopted in accordance with the extended notice and public hearing requirements of the city charter. The appellants contend that although the ordinance was enacted on December 11, 1974, as a purported emergency, the ordinance did not go into effect until January 1, 1975, 22 days after enactment, a period over twice as long as the minimum time required before a regularly enacted ordinance may become effective. Appellants further argue that the ordinance could have been passed on first reading on December 11, 1974, and still have become effective as a regular ordinance on January 1,

1975, while still fulfilling mandatory requirements of the charter for the passage of such regular ordinances, including notice, publication, filing and hearings.

In responding to these contentions, we look to Section 9 of the Charter of the City of Miami Beach, which in pertinent part states:

> " . . . To meet a public emergency affecting life, health, property, or public safety, the City Council, by two-thirds vote of the members of the City Council, may adopt the emergency ordinance at the meeting at which it is introduced and may make it effective immediately. . . . "

We also consider the relevant portions of the preamble to Ordinance 74-2018, as follows:

* * *

"WHEREAS, a grave and serious public emergency exists with respect to the housing of a substantial number of citizens of Miami Beach; and

"WHEREAS, the deterioration and demolition of existing housing; an insufficient supply of new housing; the inhibition upon the construction of new housing resulting from the operation of the Florida Pollution Control Act, other environmental protection laws, and an insufficient supply of financing; and the existing economic inflationary spiral have resulted in a substantial and critical shortage of safe, decent and reasonably priced housing accommodations as evidenced by the low vacancy rates prevailing in the City; and

"WHEREAS, this emergency cannot be dealt with effectively by the ordinary operations of the private

rental housing market, and unless residential rents are regulated, such emergency and the inflationary pressures therefrom will produce a serious threat to the public health, safety and general welfare of the citizens of Miami Beach, Florida;

"NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI BEACH, FLORIDA, that the existing Chapter 17A of the Code of the City of Miami Beach, Florida, is deleted and the following substituted therefor . . . ."

* * * * *

As clearly demonstrated by the preamble, the City found that an emergency existed. The ordinance is presumptively valid, and the question of the existence of an emergency at the time of its passage rested in the judgment and discretion of the city council. *Glackman v. City of Miami*, 51 So.2d 294 (Fla. 1951); *State v. City of Miami Beach*, 234 So.2d 103 (Fla. 1970).

The record reflects that at trial, there was ample evidence as to the factors creating a housing emergency, for example, a scarcity of housing, accelerating rents and a constant influx of people seeking housing in the area. Accordingly, the finding of the trial judge that an emergency existed was supported by competent evidence and will not be reversed on appeal.

Appellant's argument that the 22-day delay in the effective date of the ordinance rendered it a non-emergency is without merit. The record demonstrates that the reason for the delay was explained by the rent director:

> "There were two reasons. First, accepting the fact that most tenants pay rent on the first of the month, I felt that there would be a tremendous amount of confusion created if the law passed effective December 11, and refunds would have to be made for approximately 20/31 of a month. A second reason would be that the intervening period until January 1 would give us sufficient time to establish an office and get it going."

Assuming arguendo that the use of the emergency procedure was error, the trial court will not be reversed because, as stated in *McCall v. State ex rel. Daniels*, 156 Fla. 437, 23 So.2d 492, 493-94 (1945),

> " . . . even if the declaration of an emergency were found defective the ordinance would not, for that reason, be void, but the effective date would only be postponed until the time a ordinary ordinance would become operative."

Appellant's second point on appeal concerns the severability of those sections of the ordinance which were found to have been preempted by state law. Appellant's primary contention is that the subject ordinance could not conceivably have been enacted without the invalidated eviction provisions.

Where certain portions of an ordinance are invalidated, the remaining sections retain their validity unless they are found to be dependent upon those sections which have been declared void. *Lysaght v. City of New Symrna Beach*, 159 So.2d 869, 870 (Fla. 1964). While the eviction provisions of the Miami Beach ordinance certainly fostered the City's purpose in enacting the rent control law, the remaining provisions are in no way dependent upon them. Florida Statutes Chapter 83 contains ample standards for the termination of rental agreements. It imposes numerous duties

upon both landlord and tenant which are enforceable by civil action. In particular, Section 83.44 imposes an obligation of good faith in the performance or enforcement of every rental agreement or duty imposed by Chapter 83. It should also be noted that Section 12 of the rent control ordinance (which was not affected by the trial court's ruling) provides inter alia that it is unlawful for any person to remove or attempt to remove a tenant because the tenant has instituted or intends to institute action which is authorized or required by the ordinance. Thus, it appears that both landlord and tenant are otherwise afforded the necessary rights of action which have been eliminated from the ordinance.

Even without the existence of these other safeguards, the eviction procedures would still have been clearly severable. The Supreme Court of New Jersey recently reached this same conclusion after considering a similar problem in *Brunetti v. Borough of New Milford*, 350 A.2d 19 (N.J. 1975). There the court upheld a rent control ordinance despite a finding that the state legislature had preempted certain eviction provisions. The court found that the invalid provisions were "clearly severable" from the remainder of the ordinance.

The *Brunetti* court cited another New Jersey case which had also found that conflicting eviction provisions would not force the invalidation of an entire rent control ordinance. The court in that case, *Inganamort v. Borough of Fort Lee*, 293 A.2d 720 (N.J. 1972), applied a rationale which is equally appropriate here:

> " . . . [R]ent leveling cannot be said to be so intertwined with control of evictions that the municipal governing body intended both or none. Some control of maximum rents is itself conducive to the purpose of assuring continued occupancy. To be sure, direct control of evictions is an additional and a more direct technique; yet control of maximum rents is itself an intelligent partial solution. It would be unreasonable to assume that the municipality, if aware of its lack of power to control evictions directly, would do nothing at all to meet the emergency it found to exist. Id. at 727.

While the Miami Beach ordinance also provides for the establishment of rent ceilings, it also governs the maintenance of so-called Minimum Service Standards. These standards assure the tenant that the landlord will not be allowed to reduce the services provided as of a set date without a valid reason, since he is first required to petition the Director of Rent Control Administration as to proposed reductions in service. Ordinance No. 74-2018, Sections 2-J, 3, 5E & F. Thus, the Miami Beach City Council took even greater steps to alleviate the discerned housing emergency than those taken by the Borough of Fort Lee in the ordinance considered in the *Inganamort* decision.

While the remedial provisions of the Miami Beach ordinance may have been buttressed by the eviction sections, they were not rendered useless once the latter portions of the ordinance were found to be void. We therefore concur with the trial court's finding that the invalidated sections of the ordinance are severable, and that the remainder of the rent control law is unaffected by the finding of partial invalidity.

The remaining points on appeal are without merit and will not be discussed. Therefore, having carefully considered all points raised in light of the controlling principles

of law and for the reasons stated, the trial court's judgment is affirmed.

Affirmed.

Supreme Court, U. S.
FILED
OCT 25 1977
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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-502

STEPHEN MUSS, ET AL.,
Appellants,
vs.
CITY OF MIAMI BEACH, FLORIDA,
Appellee.

MOTION TO DISMISS

RICHARD KANNER, ESQ.
700 Brickell Avenue
Miami, Florida 33131
Attorney for Appellee

JOSEPH A. WANICK, ESQ.
City Attorney
1130 Washington Avenue
Miami Beach, Florida 33139

JOHN A. RITTER, ESQ.
250 Bird Road
Coral Gables, Florida 33146
Of Counsel

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

Supreme Court of the United States

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Appellee.

MOTION TO DISMISS FOR LACK OF A SUBSTANTIAL FEDERAL QUESTION

Miami Beach enacted a rent control ordinance in December 1974 which was not extended when it expired by its own terms on December 31, 1976 (See *Miami Beach* v. *Herman*, 346 So.2d 122 (3 D.C.A. Fla. 1977)). The ordinance allows owners to maintain the higher of the rate of return earned prior to the ordinance or that rate of return earned in the community generally (Section 5B(3) and 5D).

The trial was held December 1975. No testimony was presented to remotely indicate the ordinance was confiscatory as to income or property values or administered

unfairly. The trial judge granted the city's motion for an involuntary dismissal at the conclusion of plaintiffs' case.

Since *Nebbia* v. *New York*, 291 U.S. 502, this Court has consistently approved non-confiscatory price fixing regulations without a showing of "emergency." See for example *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381 (coal prices); *West Coast Hotels Co.* v. *Parrish*, 300 U.S. 379 (state minimum wage law); *Olsen* v. *Nebraska*, 313 U.S. 236 (employment agency fees); *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179 (natural gas); *Mayo* v. *Lakeland Highlands Canning Co.*, 309 U.S. 310 (citrus fruit) and *Townsend* v. *Yeomans*, 301 U.S. 441 (tobacco factors).

The rationale of these cases is noted in *Ferguson* v. *Skrupa*, 372 U.S. 726, 730.

> It is now settled that States "have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or some valid federal law." * * * We refuse to sit as a "super legislature to weigh the wisdom of legislation," and we emphatically refuse to go back to the time when courts used the Due Process Clause "to strike down state laws, regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought."

Contentions identical in substance with those raised here regarding the need and purpose of the legislation were summarily rejected in *Brotherhood* v. *Chicago, R.I. & P. R. Co.*, 393 U.S. 129 and should be rejected here.

WHEREFORE, Appellee prays this case be dismissed for its failure to present a substantial federal question.

Respectfully submitted,

RICHARD KANNER, ESQ.
700 Brickell Avenue
Miami, Florida 33131
Attorney for Appellee

JOSEPH A. WANICK
City Attorney
1130 Washington Avenue
Miami Beach, Florida 33139

JOHN A. RITTER, ESQ.
250 Bird Road
Coral Gables, Florida 33146
Of Counsel

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Appellee.

On Appeal from the District Court of Appeal of Florida, Third District

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BRIEF OPPOSING MOTION TO DISMISS

Mahoney Hadlow & Adams
Post Office Box 4099
Jacksonville, Florida 32201

1401 First Federal Building
One Southeast 3rd Avenue
Miami, Florida 33131

Of Counsel

Earl B. Hadlow, Esquire
Post Office Box 4099
Jacksonville, Florida 32201

John K. Aurell, Esquire
1401 First Federal Building
One Southeast 3rd Avenue
Miami, Florida 33131

Attorneys for Appellants

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BRIEF OPPOSING MOTION TO DISMISS

The City of Miami Beach in its Motion to Dismiss argues that after the decision of this Court in *Nebbia v. New York*, 291 U.S. 502 (1934), there can be virtually no successful due process attack on state (or city) legislation. Put another way, the City's position is that rent control legislation now cannot be successfully challenged—not even on the ground that it is arbitrary, unreasonable, or unrelated to the legislative objective.

Appellants submit that the City of Miami Beach is wrong —state legislation must still pass a basic due process test.

The legislation must not be arbitrary and it must have a substantial, rational relationship to the legislative purpose. This Court certainly made that plain by repeated assertions in *Nebbia*. For example:

> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods *consistent with due process*. And the guaranty of due process, as has often been held, demands only that the law *shall not be unreasonable, arbitrary or capricious*, and that the means selected shall have a *real and substantial* relation to the object sought to be attained. 291 U.S. at 525. [Emphasis added.]

Surely affected citizens have some recourse to the courts when faced with arbitrary legislation. Specifically, landlords must have some judicial recourse if arbitrary, irrelevant rent control legislation is adopted. The Miami Beach rent control ordinance *was* arbitrary as to luxury housing and had no justifiable public purpose.

The test of whether or not rent control legislation is arbitrary and irrelevant, not meeting minimal constitutional standards, was articulated by this Court in *Block v. Hirsh*, 256 U.S. 135 (1921), *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924), and *Levy Leasing Co v. Siegel*, 258 U.S. 242 (1922). The test, as stated in *Levy Leasing*, is the existence of "emergency" housing conditions which are injurious to "the health, morality, comfort, and even to the peace of a large part of the people . . . ." 258 U.S. at 245.

Examples are scarcity of housing, overcrowding, rent gouging and unsanitary conditions.[1]

In *Block*, Justice Holmes wrote that the gross housing emergency which then existed was "a publicly notorious and almost worldwide fact" and there was simply no question that "the emergency declared by the statute did exist. . ." 256 U.S. at 154. Subsequently, writing about the same New York rent control act in *Chastleton*, Justice Holmes added, as to the necessity for the existence of a housing emergency:

> We repeat what was stated in *Block v. Hirsh* . . . as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But, even as to them, *a court is not at liberty to shut its eyes to an obvious mistake*, when the validity of the law depends upon the truth of what is declared. 264 U.S. at 547. [Emphasis added.]

There seems to be no doubt that rent control laws are valid, irrespective of their wisdom, when facts of a housing emergency genuinely exist. But, when no such emergency exists and there are no facts to support it, rent control is arbitrary, unreasonable and irrelevant to any public policy. As

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1 This Court has not overruled or limited either *Chastleton*, *Block*, or *Levy Leasing*. Furthermore, in cases decided after *Nebbia*, this Court and others have continued to recognize the presence of such "emergency" conditions as prime elements in the promulgation of rent controls. See *Bowles v. Willingham*, 321 U.S. 503 (1944); *Woods v. Miller*, 333 U.S. 138 (1948); *Kress, Dunlap & Lane, Ltd. v. Downing*, 193 F. Supp. 874 (D.V.I. 1961); *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2nd 801 (Fla. 1972). The assertion in some quarters that *Block*, *Chastleton*, and *Levy Leasing* have been impliedly overruled presents a substantial question worthy of this Court's full consideration.

this Court wrote in *Nebbia*:

> Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. 291 U.S. at 539.

Rent control based on no supportive factual background does not have a "substantial relation" to public purpose which the *Nebbia* case requires.[2] *Chastleton* and *Levy Leasing* simply set forth the needed public purpose for valid rent control legislation. Thus, they are fully consistent with *Nebbia* and are merely descriptive of the standards set forth therein.

Nebbia and other cases discussed by the City disallow due process challenges because the circumstances in those cases clearly showed a valid public purpose and because there was no evidence that the regulation involved was arbitrary, unreasonable, or unrelated to the legislative objective.[3] *Nebbia* recognizes that "due process" is not a mechanical test, and that the facts and circumstances of each case are relevant to the constitutionality of a law:

> [A] regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts. 291 U.S. at 525.

2 The significance of the *Nebbia* case was that it struck down the wholly artificial concept that only businesses "affected with a public interest," such as railroads and utilities, were subject to valid state regulation absent extraordinary circumstances.

3 For example, in *Ferguson v. Skrupa*, 372 U.S. 726 (1963), the business of "debt-adjusting" had long been subject to abuse and the plaintiff had failed to show the absence of such abuse. *Brotherhood v. Chicago, R. I. & P. R. Co.*, 393 U.S. 129 (1968), dealt with the validity of a railroad safety measure and the Court had consistently recognized the legislative justifications for such measures.

In the instant case, it is uncontroverted that none of the conditions supporting the public purposes and legislative objectives of rent control existed in the luxury housing market on Miami Beach. The wealth of the tenants, their mobility, and the characteristics of the accommodations are entirely inconsistent wih the necessary conditions described in *Chastleton* and *Levy Leasing*. The application of rent controls to the luxury market in Miami Beach bears no substantial relationship to any legitimate public purpose and is patently "arbitrary," "unreasonable," and "demonstrably irrelevant" to the public policy sought to be implemented.

Finally, in recent months this Court has utilized the due process clause to strike down legislation which unreasonably interfered with constitutionally protected rights.[4] In *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), the Court held a zoning ordinance in violation of due process, and in *Carey v. Population Services Int'l.*, 431 U.S. 678 (1977), a law prohibiting the sale of contraceptives to minors was likewise invalidated on due process grounds.

4 Unwarranted interference with one's property rights is no less unconstitutional than unwarranted interference with other personal liberties. As stated by this Court in *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972),

> the dichotomy between personal liberties and property rights is a false one. . . . The right to enjoy property without unlawful deprivation . . . is in truth a "personal" right. . . . In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized.

Justice Powell speaking for the Court in *Moore* quoted Justice Harlan in describing the continuing constitutional protection against arbitrary legislation:

> Due process has not been reduced to any formula . . . . [The] full scope of the liberty guaranteed by the Due Process Clause . . is a rational continuum which, broadly speaking, includes a freedom from all substantial, arbitrary impositions and purposeless restraints . . . . 431 U.S. at 501-02.

The failure of the lower courts to adhere to the requirements of due process—as stated in *Nebbia* and more fully articulated as to rent controls by *Levy Leasing* and *Chastleton*—presents a substantial federal question. This Court should note probable jurisdiction.

Respectfully submitted,

JOHN K. AURELL, ESQUIRE
1401 First Federal Bldg.
One Southeast Third Ave.
Miami, Fla. 33131
(305) 358-5550

EARL B. HADLOW, ESQUIRE
P.O. Box 4099
Jacksonville, Fla. 32201

Attorneys for Appelants

MAHONEY HADLOW & ADAMS
P.O. Box 4099
Jacksonville, Fla. 33201

1401 First Federal Bldg.
One Southeast Third Ave.
Miami, Fla. 33131

Of Counsel